

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

0-0

CIV. 09-4122

MICHAEL CULLISON, JR.
and AMBER CULLISON,

:

:

Plaintiffs,

:

ANSWER

vs.

:

HILTI, INC.,

:

Defendant.

0-0

Defendant Hilti, Inc., for its Answer to Plaintiffs' Complaint, states and alleges as follows:

FIRST DEFENSE

1. Said Complaint fails to state a claim or a cause of action against Defendant upon which relief can be granted.

SECOND DEFENSE

2. Defendant denies each and every allegation, matter and thing contained in said Complaint except such as are hereinafter specifically admitted or qualified.

3. Defendant admits that safety glasses are provided with the sale or distribution of Hilti powder-actuated tools.

Civ. 09-4122
Answer
Page 2

4. Defendant is without sufficient information to form a belief as to the truth of Plaintiffs' averments in paragraphs 2 of Count One and 2, 3 and 4 of Count Two of Plaintiffs' Complaint.

5. Defendant specifically denies that the safety glasses identified in Plaintiffs' Complaint were sold in a defective condition or unreasonably dangerous to users of the glasses if in fact the glasses Plaintiff Michael Cullison was wearing at the time of his alleged injury were supplied by Defendant.

6. The safety glasses identified in Plaintiffs' Complaint were in conformity with the generally recognized and prevailing state of the art existing at the time that the product was first distributed or sold if in fact the Plaintiff Michael Cullison was wearing at the time of his alleged injury were supplied by Defendant.

THIRD DEFENSE

7. There is no practical or technically feasible alternative design that would have reduced the alleged risk without substantially impairing the reasonably anticipated and intended function if the glasses Plaintiff Michael Cullison was wearing at the time of his alleged injury were supplied by Defendant.

8. Plaintiff, Michael Cullison, Jr., assumed the risk barring Plaintiffs' recovery herein.

Civ. 09-4122
Answer
Page 3

9. If Plaintiff Michael Cullison, Jr. sustained injuries or losses as alleged in the Complaint, such injuries and losses were proximately caused by misuse or abuse of the product.

10. Upon information and belief, Plaintiffs have failed to mitigate any damages they may have sustained.

11. Plaintiffs' claims are preempted by federal law.

12. Defendant invokes each and every other Constitutional, statutory, and common law defense available, including but not limited to provisions relating to due process and limitation on damages and other remedies.

13. Defendant denies that punitive damages are recoverable in this action and further alleges that any award of punitive damages in this matter would violate State law, the South Dakota Constitution and the United State's Constitution.

14. Inasmuch as the Complaint does not describe the alleged underlying claim with sufficient particularity to enable Defendant to determine all of its legal, contractual and equitable rights, Defendant reserves the right to amend and/or supplement the averments of its Answer to assert additional pertinent liability defenses ascertained through further investigation and discovery in this action.

WHEREFORE, Defendant prays that Plaintiffs' Complaint be dismissed upon the merits and that Defendant have and recover its costs and disbursements herein.

Civ. 09-4122
Answer
Page 4

Dated this 12th day of August, 2009.

FULLER & SABERS, LLP

/s/ William Fuller
William Fuller
7521 S. Louise Avenue
Sioux Falls, SD 57108
Phone 605-333-0003
Fax 605-333-0007
Email bfuller@fullerandsabers.com
Attorneys for Defendant

DEFENDANT DEMANDS TRIAL BY JURY ON ALL ISSUES OF FACT.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2009, I sent to Mr. Bradley G. Bonyng, Brad Bonyng Law Office, 100 S. Spring Avenue, Suite 140, Sioux Falls, South Dakota 57104, Attorneys for Plaintiffs, via e-filing service, a true and correct copy of the foregoing Answer.

/s/ William Fuller
One of the Attorneys for Defendant